

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JESSE J. WALTON, #239393,

Plaintiff, No. 05-70363

v. District Judge Denise Page Hood

WAYNE COUNTY SHERIFF'S Magistrate Judge R. Steven Whalen  
DEPARTMENT, ET. AL.,

Defendants.

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**REPORT AND RECOMMENDATION RE:  
PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

Before the Court is Plaintiff's Motion for Default Judgment [Docket #61] as to Defendant Terry Smiddy, filed on September 6, 2006. I recommend that the motion be DENIED.

This motion raises the same issues Plaintiff argued in a previous Motion for Default Judgment [Docket #51]. On July 7, 2006, the undersigned filed a Report and Recommendation that Docket #51 be denied, and on September 29, 2006, the District Court adopting the R&R, entered an order denying the motion. The present motion [#61] was filed before the final order denying the previous motion [#51].

This Report and Recommendation, therefore, essentially addresses a housekeeping matter. Because a motion for default judgment is a dispositive motion, however, I must proceed by Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

Therefore, I recommend that the Motion for Default Judgment in Docket #61 be DENIED for the reason that precisely the same issue was resolved by the Court's September 29, 2006 order denying Docket #51.

Any objections to this Report and Recommendation must be filed within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v Secretary of HHS*, 932 F.2d 505 (6<sup>th</sup> Cir. 1991); *United States v Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v Secretary of HHS*, 931 F.2d 390, 401 (6<sup>th</sup> Cir. 1991); *Smith v Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6<sup>th</sup> Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

S/R. Steven Whalen  
R. STEVEN WHALEN  
UNITED STATES MAGISTRATE JUDGE

Dated: July 30, 2007

## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on July 30, 2007.

S/G. Wilson  
Judicial Assistant